

SB1124- 2017 Legislative Session  
Summary of Responses

**Email sent by Deena Layne on March 3, 2017:**

Attached please find SB 1124 proposed by Bob Aldridge and T.E.P.I. (Trust and Estate Professionals of Idaho, Inc.) regarding changes to I.C. § 15-5-104 Delegation of Powers by Parent or Guardian. Some of you may recall a similar bill from last year (SB1375) which was circulated for comment in early February 2016. I.C. § 15-5-104 has been in place since the early 90s and the drafters are seeking to expand existing statute to allow for a “springing” delegation. In reviewing the comments from last year, many of the comments focused on problems with the existing statute and the concept of delegation. Recognizing that the existing statute has some problems, we are primarily interested in hearing your comments on the proposed changes and the proposal for a “springing” delegation.

Once again, we greatly appreciate your review as well as your comments. Please send your comments to [dlayne@idcourts.net](mailto:dlayne@idcourts.net) by **Monday, March 6, 2017**. Thank you for your assistance.

**Responses from Members of the Guardianship and Conservatorship Committee:**

**RESPONSE (Judge A):**

My general impression is that the more contingencies on transfer of parental authority, the more we invite conflict. Perhaps the medical “springing” power is a valuable option to deal with the rare situation where both parents are unable to exercise their parental responsibilities. It seems, however, that the incarceration situation can be handled directly if the need arises.

**RESPONSE (Judge B) :**

I will review carefully but am confirming that the introductory paragraph 1.a appears to eliminate delegation of authority by a guardian of an incapacitated adult. When I was a successor court appointed GAL for an incapacitated adult, in my audit of the ward’s status and the file I found a wholesale delegation of authority from the court appointed guardian to an unlicensed in-home caregiver under this section. The delegation was never filed with the court, and was subject to no court oversight. The guardian also failed to mention this development in his own annual reporting. The guardian was ultimately removed for a number of poor choices, the delegation of his authority being one of the least of them as no physical harm had come to the protected person. So far as I could tell, the delegation was authorized under this section at the time. There may be times when a guardian of an adult does need to make such delegations, but parameters probably need to be established.

Thank you Bob and TEPI for all the continuing good work.

RESPONSE (Judge C):

I'm always nervous when something "springs" to life in an uncertain future, especially when it applies to the changed circumstances in a child's life. And, after all, we are talking about a three year period. Best interests often depends on more than a primary caretaker, and what may work at one point may not be workable at another. Of course, I understand, too, that the delegation can be revoked by the parents at will, a check on unintended consequences.

Apparently, this is becoming quite common according to the Statement of Purpose, with "numerous requests" to add the springing delegation. I am wondering why that is happening. As a parent, I would think you would want to exercise your best judgment about what is best for your children at the time you're making that decision, not based on some assumed future competence of the presumed springee.

Because I am assuming this has received some "extreme vetting" by TEPI, I don't have huge concerns about the statute. But I do see some potential for mischief, and I am genuinely curious about the presumed need.

Please consider these comments as being from someone who may not even fully understand the issue. Thank you.